# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

***RSA No.265 of 1997***

***Decided on:December 13, 2007.***

***State of Himachal Pradesh*** ***…..Appellant.***

***VERSUS***

***Mehar Chand*** ***…..Respondent.***

***Coram***

***The Hon'ble Mr.Justice Kuldip Singh, Judge.***

***Whether approved for reporting?[1] No***

**For the Appellant:** **Mr.M.L.Chauhan, Addl.A.G.**

**For the Respondent:** **Mr.G.D.Verma, Sr.Advocate with Mr.Romesh Verma, Advocate.**

***Kuldip Singh, Judge (Oral):***

The State of Himachal Pradesh has filed this appeal against the judgment, decree dated 12.12.1996 passed by learned District Judge, Solan in C.A.No.25-NL/13 of 1996 setting aside order dated 29.2.1996 passed by learned Assistant Collector 1st Grade, Nalagarh in case No.6/95.

***2.*** The facts, in brief, are that proceedings under Section 163 of the H.P. Land Revenue Act (for short 'the Act') were initiated against respondent for encroaching Government land comprised in Khasra No.496 measuring 5 bighas 5 biswas and Khasra No.512 measuring 7 bighas total 12 bighas 5 biswas situated in village *Bhatoli*

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

*Kalan, Hadbast No.214.* The respondent contested the proceedings and in view of the objections taken by the respondent, the Assistant Collector 1st Grade converted himself into a civil Court and ordered that the objections filed by the respondent on 20.3.1996 be treated as plaint. The respondent through the objections sought declaration that he be declared owner in possession of the suit land and the State has no right, title or interest in the same. The entries in the revenue record which are inconsistent with the rights of the respondent be declared illegal and void. The respondent also prayed decree of permanent prohibitory injunction against the State from dispossessing the respondent from the land in question.

***3.*** The respondent set up his case that he is a proprietor and resident of village Bhatoli. Mansa Ram, father of the respondent, was also proprietor and resident of village Bhatoli. The land in question came in possession of the father of the respondent on 15.5.1955. He brought the land under cultivation. On the death of Mansa Ram, father of respondent, the land in question came in possession of respondent being his only son. The respondent is in possession of the land in question through his father and himself since 15.5.1955. The possession of the respondent is over 30 years on the land. The suit land was owned by *Nagar Panchayat* and it never vested in the State. The possession of Mansa Ram, father of respondent, stood recorded in the record of rights from the year 1958-59 to 1978-79. The officials of the State unilaterally manipulated

deletion of the name of the respondent from the possessory column of the record of rights. The removal of the name of the respondent from the column of possession is wrong, illegal. The respondent is owner in possession of the suit land. The notice of ejectment is illegal.

***4.*** The State contested the objections of respondent on the ground that respondent has no locus standi to file the objections. The objections of maintainability, jurisdiction and cause of action were also taken. It is the case of the State that land in question is owned by State. The respondent has no right, title or interest in the land. The notice under Section 163 of the Act was rightly issued to respondent. The respondent was not proprietor in his own capacity as well as through his predecessor. The name of the predecessor of respondent was recorded in the revenue record for some time in the column of cultivation in connivance with revenue officials. As soon as the appellant came to know the wrong entries, correction was made and name of the respondent was removed and name of the State Government was inserted in the possessory column. The name of the father of respondent was also wrongly entered in the column of cultivation. The land in question has vested in the State under the H.P. Village Common Lands (Vesting and Utilization) Act, 1974. The respondent has not become owner by way of adverse possession.

***5.*** The Assistant Collector rejected the contentions of the respondent on 29.2.1996 and sent the case file to Assistant Collector 2nd Grade, Nalagarh for ejecting the respondent from the land in

question. The respondent filed appeal against the decision dated 29.2.1996 which has been allowed by learned District Judge. The learned District Judge has held that proceedings initiated against respondent under Section 163 of the Act are vitiated and same are quashed, hence, State has filed this appeal which has been admitted on the following substantial question of law:-

i) *Whether the Civil Court does not have jurisdiction to entertain and try the suit in view of the bar created under the Himachal Pradesh vesting and Utilization Act?*

***6.*** I have heard the learned counsel for the parties and gone through the record. The learned Additional Advocate General has submitted that learned District Judge has erred in allowing the appeal. He has submitted that civil Court has no jurisdiction to entertain the defence put forward by respondent in proceedings under Section 163 of the Act initiated by Assistant Collector 1st Grade. The State is the owner of the land in question and has every right to evict the respondent who is unauthorized occupation of the land in question. Mr.G.D.Verma, learned Senior Counsel, has supported the impugned judgment, decree.

***SUBSTANTIAL QUESTIONS OF LAW NO.1:***

***7.*** The learned Additional Advocate General has submitted that land in question has vested in the State under H.P. Village Common Lands (Vesting and Utilization) Act, 1974. The respondent is

an encroacher. The issue before the Assistant Collector 1st Grade was whether respondent has become owner of the land in question by way of adverse possession or he is still an encroacher. The Assistant Collector 1st Grade has rightly held that respondent is an encroacher and has not acquired title on the land in question by way of adverse possession and he consequently rightly directed the Assistant Collector 2nd Grade for ejectment of respondent. The stand of the appellant is that State is the owner of the land in question in view of the vestment of this land in the State under the H.P. Village Common Lands (Vesting and Utilization) Act, 1974. The case of the respondent is that land in question never vested in the State. He has become owner of the land in question by way of adverse possession. The connected question is whether an encroacher on land vested in State under H.P. Village Common Lands (Vesting and Utilization) Act, 1974 can be evicted under Section 163 of the Act in absence of inquiry contemplated under Rule 9 of the H.P. Village Common Lands (Vesting and Utilization) Rules, 1975. This question is directly covered by the judgment of this Court in ***State of Himachal Pradesh*** *Versus* ***Babu Ram***, *1996 (4) SLJ 2924.* Para-11 of the judgment is as follows:-

> "The scheme of the Act of 1974 envisages that an inquiry contemplated by Rule 9 of the Himachal Pradesh Village Common Lands Vesting and Utilization Rules, 1975 should be started before action under sub-section (5) of Section 3 of the Act

> of 1974 is taken. It is only after the matter is finally settled through appeal or otherwise that the proceedings contemplated by sub-section (5) of Section 3 of the Act of 1974 with regard to taking of possession could be undertaken because till then it would not be clear if a particular piece of land has or has not legally vested in the State Government. It is imperative on the Collector to ascertain whether a particular case falls within any of three exceptions enumerated in sub-section (2) of Section 3 of the Act of 1974 and it would only thereafter that it could be ascertained whether the land which is said to be covered by the exception legally vests in the State or not."

***8.*** It is not the case of the State that inquiry contemplated by Rule 9 of the H.P. Village Common Lands (Vesting and Utilization) Rules, 1975 was undertaken by the Collector. In absence of such inquiry, the respondent could not be proceeded under Section 163 of the Act. In *State of Himachal Pradesh Versus Babu Ram (supra),* it has further been held as under:-

> "In the present case, admittedly, no inquiry as envisaged by Rule 9 of Himachal Pradesh Village Common Lands Vesting and Utilization Rules, 1975 was undertaken by the Collector. Therefore, the plaintiff could not have been proceeded against under Section 163 of the Himachal Pradesh Land Revenue Act for his ejectment from the land in dispute."

***9.*** The respondent has disputed vestment of land in question in the State under the H.P. Village Common Lands (Vesting and Utilization) Act, 1974. The respondent has claimed adverse possession on the land in question. In these circumstances, the question of vestment of land in question in favour of State is to be determined by the Collector under Rule 9 of the H.P. Village Common Lands (Vesting and Utilization) Rules, 1975. In absence of inquiry under Rule 9 of aforesaid rules and in view of the *State of Himachal Pradesh Versus Babu Ram (supra)*, the respondent cannot be proceeded under Section 163 of the Act, to this limited extent civil Court has jurisdiction to look into the matter. No case for interference has been made out. The substantial question of law, referred above, is answered against the appellant.

***10.*** No other point was urged.

***11.*** The result of the above discussion, the appeal fails and is accordingly dismissed. No costs.

***12.*** It is, however, made clear that State is at liberty to proceed against the respondent for ejectment from the land in question by following due process of law and this judgment shall not be a bar for proceeding against the respondent, if proceeded in accordance with law.

***December 13, 2007.*** ***( Kuldip Singh )***
***(soni)*** ***Judge***